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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re OSCAR M., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

OSCAR M.,

Defendant and Appellant.

A112079

(Alameda County
Super. Ct. No. SJ05000712-01)

In this appeal in a juvenile criminal proceedings, the minor, Oscar M., challenges only an order requiring him to pay the victim restitution in the sum of \$2,800. We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

On March 3, 2005, the Alameda County District Attorney filed a petition pursuant to Welfare and Institutions Code section 602 charging Oscar M., age 14, with three felony counts and a misdemeanor count. Counts 1 and 2 alleged that the minor committed the felony of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) by assaulting Armando B. and Mario C., respectively, with a metal bar by means of force likely to produce great bodily injury, and alleged pursuant to Penal Code section 12022.7 the infliction of great bodily injury on Armando B. Counts 3 and 4 alleged unrelated offenses: unauthorized use of a vehicle (Veh. Code, § 10851) and driving a vehicle without a license. (Veh. Code, § 12500, subd. (a).) The first two counts arose from an assault on two middle school students in San Lorenzo as they were walking home from

school. Oscar M. and a companion accosted the students and inquired of their gang affiliation and then seriously injured Armando B. by striking him on the back of the head with a metal bar. Mario C. was struck on the shoulder and side but escaped further injury.

Oscar M. admitted the first count and the district attorney dismissed the other counts and the allegation of great bodily injury. At a dispositional hearing, the court adjudged Oscar M. a ward of the court, ordered that he be placed in a suitable foster home, and set a date for a hearing on the victim's restitution claim. A contested restitution hearing was held on November 2, 2005. After hearing the testimony of Gabriella C., the mother of Mario C., the court ordered the minor to pay restitution in the sum of \$2,800 to the victim through the probation department. Oscar M. filed a notice of appeal from the restitution order.

The record discloses that, at the hearing on November 2, 2005, Gabriela C. testified that before the assault she drove Mario to middle school every morning where he attended eighth grade. He walked home after school was out. After the incident, she considered that it was no longer safe for her son to walk home and arranged to have her father pick him at the school. She acknowledged that Oscar M. did not attend the school and was placed in a group home in another county, but she explained, "It wasn't just Mr. [M]. It was a group of kids." When her son graduated from middle school, she arranged for him to attend a high school in Alameda about 10 minutes drive from where she worked because she did not feel comfortable sending her son to a local school. She testified, "there was more than one person that's here now. I don't know the other faces of these kids, and I'm afraid that if he goes back that they're going to do something again, and it might be too late" She drove him to high school every day. Returning home from school, he took the bus or was given a ride by her father.

The mother presented a restitution claim of \$3,840. Her calculations were premised on the assumption that it would cost \$20 a week to drive the son from their home in San Lorenzo to his high school in Alameda. She did not deduct the weekly cost

of driving to her place of work in Alameda but insisted that \$20 was a fair cost of the additional transportation.

At the conclusion of the hearing, the court ordered restitution in the amount of \$2,800 on the ground that the mother had a right to seek the safety of her child by transferring him to a school in another area. The court reduced the claim because of the “lack of specificity” in the evidence.

DISCUSSION

“ ‘[T]he concept of restitution embodies not only the notion that people who suffer loss as a result of criminal activity should be compensated for those losses (Cal. Const., art. I, § 28, subd. (b)), but also a perception of the value of restitution as a “deterrent to future criminality” [citation], and to “rehabilitate the criminal.” [Citation.] . . . ’ [Citation.]” (*People v. Crow* (1993) 6 Cal.4th 952, 957.) Hence, a restitution order “seeks to rehabilitate the defendant and deter defendant and others.” (*People v. Bernal* (2002) 101 Cal.App.4th 155, 161-162.) “Restitution ‘is an effective rehabilitative penalty because it forces the defendant to confront, in concrete terms, the harm his actions have caused. . . .’ [Citations.]” (*People v. Moser* (1996) 50 Cal.App.4th 130, 135-136.)

The statute governing restitution in juvenile criminal proceedings, Welfare and Institutions Code section 730.6, subdivision (h), provides that “[t]he court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so” (See also Pen. Code § 1202.4, subd. (f).) “There is no requirement the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable, nor is there any requirement the order reflect the amount of damages that might be recoverable in a civil action.” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

“The standard of review of a restitution order is abuse of discretion.” (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132; *People v. Thygesen* (1999) 69 Cal.App.4th 988, 992.) “A victim’s restitution right is to be broadly and liberally construed.” (*People v. Mearns* (2002) 97 Cal.App.4th 493, 500.) “When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.” (*People v. Dalvito* (1997) 56

Cal.App.4th 557, 562; *In re Brian N.* (2004) 120 Cal.App.4th 591, 593-594, reversed on other grounds in *People v. Martinez* (2005) 36 Cal.4th 384, 394.)

Appellant concedes that the victim's mother was entitled to restitution for the cost of driving her son to a high school outside of the neighborhood where the assault occurred. Indeed, *People v. Mearns, supra*, 97 Cal.App.4th 493 upheld a restitution order in a closely analogous situation. The victim was raped by a defendant who entered her poorly constructed mobilehome. The victim sold the mobilehome and purchased another mobilehome so as to relocate in a safer environment. The court allowed her restitution measured by the difference in price of the two mobilehomes.

In this appeal, appellant argues only that the trial court had no "factual and rational" basis for the amount of restitution ordered. We consider that the record was sufficient to support the trial court's exercise of discretion, though it was only marginally adequate. The mother offered a claim based on the cost of driving her car from home to the son's high school. The minor's counsel did not seek to impeach this figure and it became the premise for further questions and argument. Counsel sought instead to challenge the claim by suggesting that the mother's place of employment was on the way to the school and therefore the claim should not include the part of the daily journey to school equivalent to the distance to her work place. But this line of impeachment was never clearly established and left many questions unanswered. We cannot say on the present record that the trial court was compelled to reduce the claim. The mother conceded, however, that her cost estimate was at "the high end" because it did not take into account school holidays or other absences during the school year and was based on the gas consumption of an S.U.V.

On this record, we consider that the trial court had a reasonable basis to find that the daily trip from the minor's home to the new high school provided a factual basis for the restitution order, but in light of the paucity of evidence, the court could reasonably conclude that a discounted award was more likely to provide an appropriate measure of

the mother's loss. Since the court was not obliged to determine the exact amount of the loss, we conclude that appellant has failed to show an abuse of discretion.

The judgment is affirmed.

Swager, J.

We concur:

Marchiano, P. J.

Margulies, J.